IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 2:07-CV-686**
	)	
	)	
CITY OF MONTGOMERY,	)	
BOBBY BRIGHT, ART BAYLOR,	)	
	)	
Defendant.	)	

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, City of Montgomery ("City"), Bobby Bright ("Mayor Bright"), and Art Baylor ("Chief Baylor"), hereby responds to the Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment ("Plaintiff's Response"). In addition to reaffirming all the arguments raised in Defendants' Brief, the Defendants respond specifically to the arguments contained in the Plaintiff's Response as set forth herein.

Procedural Background

Plaintiff, Candida Stokes ("Stokes"), a former police officer with the City, sued the City alleging that she was terminated because she was disabled, she was considered or perceived to be disabled, and in retaliation of taking Family Medical Leave in accordance with the Family Medical Leave Act. Additionally, Plaintiff alleged that the City discriminated against her based on her gender.

Stokes filed a discrimination claim with the Equal Employment Opportunity Commission ("EEOC") against the City on July 11, 2006, alleging discrimination based on sex, disability, and retaliation. (*DX 1, Charge of Discrimination No. 420-2006-03813*). As a result, the U.S Department of Justice issued a Notice of Right to Sue Letter on April 29, 2007. (*DX 2, Notice of Right to Sue Letter*).

Stokes filed this action on July 27, 2007, pursuant to the Americans with Disabilities Act ("ADA") (*Doc. 1*), and filed an amended complaint on June 18, 2008 (*Doc. 28*). On August 21, 2007, Defendants filed an answer with affirmative defenses (*Doc. 4*), and filed an amended Answer on July 7, 2008 (*Doc. 31*). On August 12, 2008, Defendants filed their Motion for Summary Judgment, in which they contended that Stokes was not disabled nor was she considered and/or perceived disabled by Defendants. (*Doc. 36*). Additionally, they contended that Stokes was terminated for violating the rules and regulations of the Montgomery Police Department, Duties of Responsible Employment of a Montgomery Police Officer. Stokes filed her Motion in Opposition to Defendants' Motion for Summary Judgment on August 26, 2008. (*Doc. 39*).

Narrative Statement of Facts

On February 12, 2002, the City hired Stokes to work as a Montgomery Police Officer. Three years later Stokes attempted to take her own life. On December 19, 2005, Stokes ingested a lethal amount of over-the-counter medication -- approximately 150 Tylenol PM capsules. As a result, Stokes was hospitalized and the Montgomery Police Department was contacted. Soon after Stokes' hospitalization, she was granted leave pursuant to the Family Medical Leave Act ("FMLA"). Stokes' leave began on December 19, 2005, and expired on January 12, 2006.

Additionally, after Stokes' hospitalization, the City of Montgomery initiated an investigation of the suicide attempt to determine whether she met the duty to remain fit standard, which is required under Article I, Section 1.410 of the Manual of Rules and Regulations of the

Montgomery Police Department. Additionally, Stokes was charged with violation of Article I, Section 1.330 of the Manual of Rules and Regulations of the Montgomery Police Department, Duties of Responsible Employment of a Montgomery Police Officer.

Before returning to work, Stokes underwent a fitness for duty evaluation at the request of the City. It was determined that Stokes was fit to return to duty. After it was determined that Stokes was fit for duty, and therefore, had no disability, she was placed on Administrative Duty at the Montgomery Police Department.

On February 28, 2006, a hearing was held before the trial board to determine whether Stokes violated Article I, Section 1.410 of the Manual of Rules and Regulations of the Montgomery Police Department, and Article I, Section 1.330 of the Manual of Rules and Regulations of the Montgomery Police Department, Duties of Responsible Employment of a Montgomery Police Officer. The trial board initially dismissed the charge of violating Article I, Section 1.410, which was later reinstated by Chief Baylor, and upheld the charge of violating Article I, Section 1.330. Stokes' charge of violating Article I, Section 1.330 was upheld throughout her disciplinary hearings and she was ultimately dismissed from employment with the City of Montgomery on those grounds.

Summary Judgment Standard

Under Rule 56(c) of the *Federal Rules of Civil Procedure*, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The moving party "bears the initial responsibility of informing the district court of the basis for its motion, identifying those portions of the 'pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of genuine issue of material fact.'" *Id.* at 323. The movant can meet this burden by presenting evidence showing that there is no dispute of material fact, or by showing the district court that the non-moving party has failed to present evidence in support of some element of the case on which it bears the ultimate burden of proof. *Id.* at 322-24.

Once the moving party has met its burden, Rule 56(e) "requires the non-moving party to go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324. To escape summary judgment, the non-moving party "must do more than show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

After the non-moving party has responded to the motion for summary judgment, the court must grant summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as matter of law. *Fed. R. Civ. P.* 56(e). Similarly, the moving party is entitled to summary judgment if the non-moving party has failed to prove the elements of her cas or there is the absence of evidence in the record to support a judgment for the non-moving party on the issue in question. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115-16 (11th Cir. 1993).

Argument

I. Stokes failed to establish a prima facie case of discrimination under the ADA and § 504 of the Rehabilitation ACT.

In Stokes' First Amended Complaint she alleges numerous violations of her rights under both the ADA and § 504 of the Rehabilitation Act. These alleged violations include claims of disparate treatment, disparate impact, failure to accommodate, and retaliation. (*Doc. 1*). As will be demonstrated below, Plaintiff has failed to meet her burden as the non-moving party to show this Court that there is a genuine issue of material fact and that the Defendants' are not entitled to judgment as a matter of law.

In order to establish a *prima facie* case under the ADA, Stokes must show that (1) she as a disability; (2) she is a qualified individual; and (3) she was unlawfully subjected to discrimination based on her disability. *LaChance v. Duffy's Draft House, Inc.*, 146 F.3d 832, 835 (11th Cir. 1998). Additionally, to establish a *prima facie* case of discrimination under § 504 of the Rehabilitation act, she must show the elements of an ADA discrimination claim with the additional element of establishing that the she was employed by an entity which receives federal financial assistance. *See Burgos v. Chertoff*, 274 F. Appx. 839, 842 (11th Cir. 2008); *See also* 29 U.S.C. § 794. Accordingly, if Stokes cannot establish a *prima facie* case under the ADA, she cannot establish a *prima facie* case under § 504 of the Rehabilitation Act.

It is clear from the pleadings, discovery, and the affidavits set forth by the Plaintiff that Ms. Stokes cannot meet all the essential elements of her claims under both the ADA and § 504 of the Rehabilitation Act. First, Stokes is not disabled. Second, Stokes has failed to show that she was a qualified individual under either the ADA or § 504. Third, Stokes has failed to show that the Defendants discriminated against her based on any disability.

A. Stokes does not meet the definition of disability under the ADA or § 504.

The linchpin of both Stokes' ADA and § 504 claims is whether she meets the definition of disability. Disability, as the term is defined under both the ADA and § 504 is: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (2) a record of such impairment; or (3) being regarded as having such an impairment.

Stokes has failed to present any evidence that she meets any of the three definitions of disability under either the ADA or § 504 of the Rehabilitation Act.

1. Plaintiff does not have an actual disability

Although the Plaintiff states that the Defendants' failed to meet "their burden presenting any evidence that Stokes is not substantially limited in any major life activity (*Doc. 39, p. 24*), it is incumbent upon those "'claiming the Act's protection ... to prove a disability by offering evidence that the extent of the limitation [caused by their impairment] in terms of their own experience . . . is substantial.'" *Toyota Motor Mfg., Kentucky, Inc. v. Williams,* 534 U.S. 184, 198 (2002) (*quoting Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999)).Under the first prong of the definition of disability, it is the Plaintiff's sole burden to establish that she suffers from an actual disability, physical or mental, that substantially limits one or more of the major life activities of the individual. Courts must strictly interpret the terms "major life activities" and "substantially limits" so as "to create a demanding standard for qualifying as disabled ...." *Id.* at 197.

While the Rehabilitation Act defines neither "major life activities" nor "substantially limits," courts look to the regulations of the Equal Employment Opportunity Commission ("EEOC") for guidance, which regulations that agency promulgated to implement the Americans with Disabilities Act. *Gordon v. E.L. Hamm & Assoc., Inc.*, 100 F.3d 907, 911 (11th Cir.1996). Those regulations suggest that major life activities mean "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." *Garrett v. University of Alabama at Birmingham Board of Trustees*, 507 F.3d 1306, 1311 (11th Cir. 2007) (*quoting* 29 C.F.R. § 1630.2(i)). The EEOC further notes that this list is not exhaustive, but applies to "those basic activities that the average person in the general population can perform with little or no difficulty." *Id.* (*quoting* 29 C.F.R. App. § 1630.2(i)).

The undisputed facts show that Plaintiff was not substantially limited in her ability to perform major life activities. On January 20, 2006, Dr. David D. Schaffer completed his "Fitness for Duty Evaluation" of Stokes. (*DX 3, Fitness for Duty Evaluation of Candida Stokes by Dr. David D. Schaffer*). In that evaluation, Dr. Schaffer noted that Stokes was "well groomed, appropriately dressed, and appeared to be in good health." (*DX 3*). Additionally, Dr. Schaffer noted that Stokes "maintained good eye contact" and that her "speech was of regular rate, rhythm, volume, and inflection." (*DX 3*). Dr. Schaffer also noted that Stokes was "alert and fully oriented" and that her "though process was logical and goal directed." (*DX 3*). Dr. Schaffer's objective analysis shows that Stokes has the capability of performing the basic activities that the average person in the general population can perform with little or no difficulty. Furthermore, Dr. Schaffer's evaluation shows that Stokes not only had the ability to care for herself, she also had the ability to care for and meet the needs of her daughter. (*DX 3*). Specifically, Dr. Schaffer noted that Stokes "has a thirteen year old daughter that she is raising by herself" and that she "take[s] her daughter to school" and "pick[s] her daughter up from school." (*DX 3*). Additionally, Dr. Schaffer noted that Stokes "spent the last part of the day before returning to work cooking dinner and caring for her daughter." (*DX 3*).

Although Plaintiff cites a Second Circuit case stating that "[a] mental illness that impels one to suicide can be viewed as a paradigmatic instance of inability to care for oneself," that case is neither controlling nor is it relevant. In the Eleventh Circuit, each claim of disability is determined on a case-by-case basis. *Garrett*, 507 F.3d at 1311. Here, the undisputed facts show that, despite Stokes' attempted suicide, she was able to care for herself, she was able to return to work, she was able to communicate effectively, and she was able to care for the needs of her daughter. These facts show that Stokes has failed to meet her burden in establishing that she has an actual disability; therefore, this Court should enter Summary Judgment in favor of the Defendants.

2. Defendants did not regard Plaintiff as Disabled

Because Stokes cannot establish that she suffers from an actual disability, as defined by the ADA and § 504, she must attempt to show that the Defendants regarded her as disabled. However, contrary to the Plaintiff's assertion, the Defendants did not regard Stokes as disabled.

In order for the Plaintiff to establish that an employer regarded her as disabled she must show that: (1) the covered entity mistakenly believes that the individual has a physical impairment that substantially limits one or more major life activities; or (2) the covered entity mistakenly believes that an actual, non-limiting, impairment substantially limits one or more major life activities. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 489 (1999).

To show that she was regarded as substantially limited in her ability to work, Stokes must "prove that [defendant] considered [her] as 'significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes compared to the average person having comparable training, skills and abilities.' " *Cash v. Smith,* 231 F.3d 1301, 1306 (11th Cir. 2000). Accordingly, Stokes must demonstrate that the City regarded her as either having a substantially limiting impairment that she did not have or that she had a substantially limiting impairment, when, in fact, the impairment is not so limiting. Stokes can do neither.

It appears that the Plaintiff is attempting to blur the line between her alleged disability (depression) and the affirmative act (attempted suicide) that ultimately led to her dismissal. Here, after attempting to commit suicide, Stokes was diagnosed with depression. It is clear from the undisputed facts that Defendants did not regard Stokes as disabled; rather, the Defendants merely considered the attempted suicide, which is not a disability, as a possible violation of Montgomery Police Department Rules. Stokes presented evidence from two of her own doctors, as well as the doctor hired by the City of Montgomery, that stated her depression would not impair her ability to perform the functions of a police officer. Because the City relied on the information from the doctors in assessing her fitness for duty, it is clear that she was not regarded as disabled. The ultimate deciding factor surrounding Stokes' dismissal was her violations of the rules and regulations of the Montgomery Police department, and the potential liability allowing her to remain as a sworn police officer for the City of Montgomery. Based on the investigation that was launched into Stokes' possible rule violations. It was determined that Stokes did in fact violate Montgomery Police Department Rules, and ultimately the recommendation of dismissal made it to Mayor Bright's desk for review, at which time he concurred with the recommendations of Stokes' supervisors and entered the termination order for failure to comply with the rules of the Montgomery Police Department.

Because the Defendants at no time considered Stokes' alleged disability when assessing her possible rule violations, which led to her termination, it cannot be said that they regarded her as disabled; therefore, the Plaintiff has failed to establish disability under both the ADA and § 504 and this Court should enter Summary Judgment in favor of the Defendants.

3. Plaintiff does not have a record of an impairment

Because Stokes cannot establish an actual disability or that the Defendants regarded her as disabled, she can only rely on the third prong of disability. That prong allows for disability when the plaintiff can show that she has a record of impairment. A person has a record of impairment if she "has a history of, or has been misclassified . . . as having a mental or physical impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(2). As Plaintiff correctly states in her Response, "[i]f an employer relies on the information contained in a plaintiff's medical records, this is enough to satisfy this prong of the definition of disability." (*Doc. 39, p. 33*). Here, however, the Plaintiff mistakenly asserts that the Defendants relied on Stokes' past medical history to ultimately dismiss her from her position with the City. The undisputed facts show otherwise.

The Plaintiff's response states that:

> Stokes has put forth evidence demonstrating that she has a record of a disability. Stokes has a history of major depression, or a psychiatric hospitalization, and continued treatment for her depression of which defendants were aware. Bright, Murphy and Baylor testified that Based on Stokes' history of mental illness, including the suicide attempt caused by her major depression, they were concerned that Stokes would again attempt suicide, put others at risk, or would otherwise be unable to perform the duties associated with her job. Thus, a reasonable inference may be made that Defendants relied on Stokes' history when they refused to allow her to return to work.

(*Doc 39, p. 35*). Once again, the Plaintiff is attempting to blur the line between Plaintiff's alleged disability (depression) and the affirmative act (attempted suicide) that ultimately led to her dismissal. Additionally, the Plaintiff mistakenly asserts that the Defendants relied on Stokes' history of mental illness. The undisputed facts in this case establish that the only medical information that the Defendants considered in determining whether the Plaintiff could return to work was evidence from two of Stokes' own doctors, as well as the doctor hired by the City of Montgomery, that stated her alleged impairment of depression would not impair her ability to perform the functions of a police officer. Relying on this information the Defendants allowed Stokes to return to work doing light administrative duty, pending the resolution of the investigation that was being conducted for possible rule violations.

Before Stokes was able to return to duty as a Police Officer it was determined that she violated two Montgomery Police Department rules, which ultimately led to her dismissal. It is clear that Stokes' alleged disability was never considered when assessing her rule violations; rather, it was the affirmative act of attempted suicide that was considered, which is not a disability. Because the Defendants relied only on an affirmative act rather than any history of disability, Stokes has failed to establish the third prong of disability; therefore, this Court should issue Summary Judgment in favor of the Defendants.

II. Defendants had a legitimate non-discriminatory reason for dismissing Stokes.

Even if Plaintiff can establish that she suffers from a disability, or is perceived to be disabled, the Defendants have articulated a legitimate non-discriminatory reason for her termination.

If Stokes has established a *prima facie* case of discrimination, the Court would then have to apply burden-shifting analysis of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). Under this standard, the burden would shift to the defendant employer to offer a legitimate, non-discriminatory reason for its employment decision. If it does so, the burden shifts back to the plaintiff to show that the proffered reason for the employer's decision was pretextual. In *Spades v. City of Walnut Ridge,* 186 F.3d 897(8th Cir. 1999), the Eighth Circuit dealt with the same issue. There a Police Officer attempted suicide and the City of Walnut Ridge terminated his employment. Spades then sued the City of Walnut Ridge alleging violations of ADA and FMLA and retaliation. That court held that:

> Even assuming Spades established a prima facie case, we agree with the district court that he has not shown that the legitimate non-discriminatory reason for termination was a pretext. The City articulated a non-discriminatory reason for his termination--increased likelihood of liability. Increased potential liability associated with an employee's past activities is a legitimate concern of the City, particularly when there is known violent behavior. Claims of negligent hiring,

> supervision, and retention loom large in the minds of employers and their lawyers. Thus, Spades has advanced no factual or legal argument, beyond mere conjecture and conclusion, that the City's stated reason for discharging him was a pretext for discrimination.

Id.

Clearly, through the testimony of Defendant Bright (*DX 4, Excerpts of Mayor Bright's Deposition Testimony*), Defendant Baylor (*DX 5, Excerpts of Chief Baylor's Deposition Testimony*), Major Kevin Murphy (*DX 6, Excerpts of Murphy's Deposition Testimony*), and John Carnell, the City Risk Manager (*DX 7, Excerpts of Carnell's Deposition Testimony*), the future Liability of the City of Montgomery was a serious consideration and ultimately the reason for the termination of Stokes. In Mayor Bright's deposition (*DX 4, pg 21-36*) as well as the deposition of Chief Baylor *(DX 5, pg 80-82, 199-202)* both expressed concerned for future liability should Plaintiff Stokes remain on the force. This concern was further expressed by Major Murphy *(DX 6, pg 58-62, 117-118)*, who was relying upon the recommendation of the City's Risk Manager, John Carnell, in assessing potential liability for the City should Plaintiff Stokes be allowed to remain employed with the City of Montgomery (*DX 7, pg 20-21, 73-74).*

Although counsel for Plaintiff attempted to pin down each of the said deponents in what that liability would be that the City might face, none could express all of the possible legal ramifications of allowing Stokes to remain on the force. Being a public safety officer in the State of Alabama comes with inherent risks and all officers are instructed through the academies of potential liabilities regarding their employment. The essential functions of a police officer's job is to enforce the laws of the State of Alabama as well as the municipality in which they serve, and in doing so they are depriving certain individuals of their rights of liberties guaranteed by the United States Constitution as well as the Constitution of the State of Alabama. When depriving individuals of their rights, litigation more times than not ensues. Had the City allowed Plaintiff

Stokes to remain employed with the City of Montgomery, a constant reminder of this incident could have overshadowed a stellar career with this one event. Possible scenarios of Stokes being involved in an altercation in which deadly force was used would expose her, and her medical condition to the scrutiny of not only Plaintiff's counsel, but also a jury of her peers, not to mention the public in general. Therefore, Defendants would state that even if this Honorable Court should deem that Stokes in fact had or was perceived to have a disability, that Summary Judgment would still be proper as to Count I of the complaint for the foregoing reasons.

Conclusion

Stokes has not identified any physical or mental impairment that will allow her to succeed as an individual with a disability protected by the ADA. Stokes does not have a physical or mental impairment that substantially limits or limited one or more of her major life activities nor is there a record of Stokes having a physical or mental impairment that substantially limited one or more of her major life activities.

Additionally, Stokes was never perceived to be disabled. The condition that she was diagnosed with has been treated and she was returned to full duty by three mental health professionals. Stokes has not identified any physical or mental impairment that will allow her to succeed as an individual with a disability protected by the ADA. Stokes cannot demonstrate a prima facie case under the ADA showing that she is in the class of persons protected by the ADA.

Assuming that Stokes has made a prima facie showing as an individual with a disability under ADA, the City has shown that the possibility of future exposure to litigation coupled with the violations of the rules and regulations of the Montgomery Police Department were a legitimate non discriminatory reason for termination.

For the abovementioned reasons, Defendant's Motion for Summary Judgment on all Counts is due to be granted.

Submitted this 2nd day of September, 2008.

/s/Michael D. Boyle
Michael D. Boyle (Boy032)
Attorney for City of Montgomery

OF COUNSEL:
City of Montgomery
Legal Division
Post Office Box 1111
Montgomery, AL 36101-1111
334.241.2050
FAX 334.241.2310

CERTIFICATE OF SERVICE

I hereby certify that foregoing has been served upon the following by electronic filing/notification through CM/ECF with United States District Court Middle District of Alabama on this 12th day of August, 2008.

Deborah A. Mattison
Rachel L. McGinley
Wiggins, Childs, Quinn & Pantazis, LLC
The Kress Building
301 19th Street North
Birmingham, AL 35203

/s/ Michael D. Boyle
Of Counsel

EXHIBIT 1
CHARGE OF DISCRIMINATION

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form	ENTER CHARGE NUMBER [X] EEOC 420-2006-03813
_______________ (State or local Agency, if any) COPY	and EEOC

NAME (Indicate Mr., Ms., or Mrs.)		HOME TELEPHONE NO. (Include Area Code)
Ms. Candida Stokes Due-8-21		(334) 897-0304
STREET ADDRESS 2215 Taylor Mill Road	**CITY, STATE AND ZIP** Elba, Alabama 36323	**COUNTY** Coffee

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NO. OF EMPLOYEES/MEMBERS	TELEPHONE NO. (Include Area Code)
City of Montgomery	Over 15	(334) 241-2532
STREET ADDRESS 320 North Ripley	**CITY, STATE AND ZIP** Montgomery, Alabama 36104	**COUNTY** Montgomery

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es):	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year)
[] Race [ ] Color [x] Sex [ ] Religion [ ] Age [x] Disability [] National Origin [x] Retaliation [ ] Other	May 9, 2006

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

Date of Birth: 1/3/72 **Sex:** Female

1. I am a female and I was hired by the City of Montgomery as a police officer on February 15, 2002.

2. As a police officer, during my training I was assigned to third shift patrol. When I completed my training and became a senior Officer, I was assigned to my own route. I was promoted to Corporal in February 2005. I have been qualified for the Corporal position since my promotion in February 2005, and remain qualified for this position today.

3. In December 2005, I attempted suicide. I am a person with a disability as defined by the Americans with Disabilities Act. I have been diagnosed with major depression and sleep deprivation which resulted in part from my depression. *Inter alia,* I am limited in the major life activities of concentrating, sleeping, and communicating with others. I have a history of disability, and was perceived by the Respondent as disabled. I am qualified to perform the essential functions of my job and other positions, with or without reasonable accommodations.

4. Respondent meets the definition of an "employer" as defined by the Americans with Disabilities Act.

Continued on next page

[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. 07-11-06 Candida S. Stokes Date Charging Party (*Signature*)	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

5. After receiving treatment in January 2006, I returned to work. Shortly thereafter, the Respondent sent me to a doctor for an evaluation. I was released to return to work to my former position by this doctor as well as my own personal doctors. Despite having been cleared to work by several doctors, I was placed in a desk position, rather than in my patrol position.

6. Even though I was able to perform this new position, the Respondent believed I was unfit for duty because of my prior suicide attempt and began proceedings to determine whether I was fit for duty.

7. On May 9, 2006, my employment with the Respondent was terminated. The reasons offered for my termination were (1) that I was not fit for duty and (2) that I engaged in activities which may reflect on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the police department. I was told that if the public had found out about my suicide attempt, the public would not think that I should continue to be employed as a police officer. Both my personal doctor and the one the City sent me to found that I was fit for duty. Upon information and belief, male police officers who have suffered from mental health issues have not been terminated.

9. I have been intentionally denied employment opportunities because of my disability, my record of disability, and because I am perceived as disabled.

10. I believe that my termination is because of my gender, female, and because of my disability, history of disability, and the Respondent's perception of me as an individual with a disability.

11. As the result of the above actions, including Respondent's malicious termination of my employment, I have suffered harm, have been injured, and, *inter alia*, have been denied wages, benefits, and an opportunity to pursue gainful employment. As a result, I am entitled to back-pay as well as compensatory and punitive damages, and attorneys' fees and costs. I have also suffered mental distress and hardship.

I declare under penalty of perjury that the foregoing is true and correct.

Candida L. Stokes
Signature

July 11, 2006
Date

JUL 1 1 2006

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Birmingham District Office

Ridge Park Place
1130 22nd Street, South, Suite 2000
Birmingham, AL 35205
(205) 212-2100
TTY (205) 212-2112
FAX (205) 212-2105

The above referenced charge is about to begin the long investigative and legal adjudication process. At this point, the Equal Employment Opportunity Commission invites both parties to pause and seriously consider the possibility of resolving the disagreement through Alternative Dispute Resolution (ADR).

Mediation focuses on a resolution of the underlying dispute by addressing the interest of both parties. It is not a forum for reaching a determination on whether discrimination occurred. Therefore, any agreement reached during mediation does not constitute an admission that discrimination occurred.

There is no fee for mediation. If you are interested in resolving this complaint through mediation you do not need to provide a position statement or requested documentation at this time. If a resolution is reached, an agreement will be signed and the case will be closed. The Charging Party will not be issued a Notice of Right to Sue.

If a charge is not resolved during the mediation process, you will then respond to the charge and it will be processed just like any other charge. Since the entire mediation process is strictly confidential, information revealed during the mediation session cannot be disclosed to anyone including other EEOC personnel. Therefore, it cannot be used during any subsequent investigation.

Please return the signed form within ten (10) days of your receipt of this notice to begin the mediation process.

You may reach the Alternative Dispute Resolution (ADR) department directly at (205) 212-2146

EEOC FORM 131 (5/01)

U. S. Equal Employment Opportunity Commission

Ms Kim Fehl
City Attorney
CITY OF MONTGOMERY
P.O. Box 1111
Montgomery, AL 36101

RECEIVED
JUL 21 2006
CITY ATTORNEY'S OFFICE

PERSON FILING CHARGE

Candida Stokes

THIS PERSON *(check one or both)*

☐ Claims To Be Aggrieved

☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

420-2006-03813

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

☐ Title VII of the Civil Rights Act

☒ The Americans with Disabilities Act

☐ The Age Discrimination in Employment Act

☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☐ No action is required by you at this time.
2. ☒ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☒ Please provide by **21-AUG-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☒ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **02-AUG-06** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**
If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Murry A. Gosa,
Intake Supervisor
EEOC Representative

Telephone: **(205) 212-2119**

Birmingham District Office - 420
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ AGE ☒ DISABILITY ☐ RETALIATION ☐ OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
July 19, 2006	Bernice Williams-Kimbrough, District Director	Bernice Williams-Kimbrough

CONSENT TO MEDIATION

The employer is in receipt of Charge No. 420 2006-03813 filed by Candida Stokes against City of Montgomery. The employer is interested in resolving this charge through Equal Employment Opportunity Commission's (EEOC) Alternate Dispute Resolution (mediation) process.

We understand that if the charge is selected for mediation, the charge will be mediated by the EEOC ADR Administrator who is a certified mediator or another neutral mediator who is not employed by the Commission.

We understand that the mediation process is voluntary and non-binding. We understand that either the Charging Party or Respondent may opt out of mediation at any time without adversely affecting the way the EEOC will process the charge. If the charge is not resolved through mediation, it will be processed through EEOC's charge processing procedure. Should the charge be resolved through mediation, the EEOC will terminate its processing of the charge. The approximate time for the ADR process is sixty (60) days.

We understand that the mediation process is confidential. The employer will not disclose any information discussed within the mediation process or the outcome of the mediation process. The employer does authorize the mediator to disclose to the EEOC's Birmingham District Office the final results of the mediation process and any benefits received by the complainant. This information is reported for ADR program evaluation purposes only.

If the charge is selected for mediation, the employer agrees to cooperate with the EEOC and the mediator toward resolving the charge.

[signature] 25 July 06

Signature for the Respondent Date

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. . . . . Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

EXHIBIT 1
CHARGE OF DISCRIMINATION

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form	ENTER CHARGE NUMBER [X] EEOC 420-2006-03813

COPY

______________________________________ and EEOC
(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.) Ms. Candida Stokes	Due-8-21	HOME TELEPHONE NO. (Include Area Code) (334) 897-0304
STREET ADDRESS 2215 Taylor Mill Road	CITY, STATE AND ZIP Elba, Alabama 36323	COUNTY Coffee

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME City of Montgomery	NO. OF EMPLOYEES/MEMBERS Over 15	TELEPHONE NO. (Include Area Code) (334) 241-2532
STREET ADDRESS 320 North Ripley	CITY, STATE AND ZIP Montgomery, Alabama 36104	COUNTY Montgomery

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es): [] Race [ ] Color [x] Sex [ ] Religion [ ] Age [x] Disability [] National Origin [x] Retaliation [ ] Other	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) May 9, 2006

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

Date of Birth: 1/3/72 **Sex:** Female

1. I am a female and I was hired by the City of Montgomery as a police officer on February 15, 2002.

2. As a police officer, during my training I was assigned to third shift patrol. When I completed my training and became a senior Officer, I was assigned to my own route. I was promoted to Corporal in February 2005. I have been qualified for the Corporal position since my promotion in February 2005, and remain qualified for this position today.

3. In December 2005, I attempted suicide. I am a person with a disability as defined by the Americans with Disabilities Act. I have been diagnosed with major depression and sleep deprivation which resulted in part from my depression. *Inter alia,* I am limited in the major life activities of concentrating, sleeping, and communicating with others. I have a history of disability, and was perceived by the Respondent as disabled. I am qualified to perform the essential functions of my job and other positions, with or without reasonable accommodations.

4. Respondent meets the definition of an "employer" as defined by the Americans with Disabilities Act.

Continued on next page

[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. 07-11-06 Candida S. Stokes Date Charging Party *(Signature)*	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

5. After receiving treatment in January 2006, I returned to work. Shortly thereafter, the Respondent sent me to a doctor for an evaluation. I was released to return to work to my former position by this doctor as well as my own personal doctors. Despite having been cleared to work by several doctors, I was placed in a desk position, rather than in my patrol position.

6. Even though I was able to perform this new position, the Respondent believed I was unfit for duty because of my prior suicide attempt and began proceedings to determine whether I was fit for duty.

7. On May 9, 2006, my employment with the Respondent was terminated. The reasons offered for my termination were (1) that I was not fit for duty and (2) that I engaged in activities which may reflect on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the police department. I was told that if the public had found out about my suicide attempt, the public would not think that I should continue to be employed as a police officer. Both my personal doctor and the one the City sent me to found that I was fit for duty. Upon information and belief, male police officers who have suffered from mental health issues have not been terminated.

9. I have been intentionally denied employment opportunities because of my disability, my record of disability, and because I am perceived as disabled.

10. I believe that my termination is because of my gender, female, and because of my disability, history of disability, and the Respondent's perception of me as an individual with a disability.

11. As the result of the above actions, including Respondent's malicious termination of my employment, I have suffered harm, have been injured, and, *inter alia*, have been denied wages, benefits, and an opportunity to pursue gainful employment. As a result, I am entitled to back-pay as well as compensatory and punitive damages, and attorneys' fees and costs. I have also suffered mental distress and hardship.

I declare under penalty of perjury that the foregoing is true and correct.

Candida L. Stokes
Signature

July 11, 2006
Date

JUL 11 2006

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Birmingham District Office

Ridge Park Place
1130 22nd Street, South, Suite 2000
Birmingham, AL 35205
(205) 212-2100
TTY (205) 212-2112
FAX (205) 212-2105

The above referenced charge is about to begin the long investigative and legal adjudication process. At this point, the Equal Employment Opportunity Commission invites both parties to pause and seriously consider the possibility of resolving the disagreement through Alternative Dispute Resolution (ADR).

Mediation focuses on a resolution of the underlying dispute by addressing the interest of both parties. It is not a forum for reaching a determination on whether discrimination occurred. Therefore, any agreement reached during mediation does not constitute an admission that discrimination occurred.

There is no fee for mediation. If you are interested in resolving this complaint through mediation you do not need to provide a position statement or requested documentation at this time. If a resolution is reached, an agreement will be signed and the case will be closed. The Charging Party will not be issued a Notice of Right to Sue.

If a charge is not resolved during the mediation process, you will then respond to the charge and it will be processed just like any other charge. Since the entire mediation process is strictly confidential, information revealed during the mediation session cannot be disclosed to anyone including other EEOC personnel. Therefore, it cannot be used during any subsequent investigation.

Please return the signed form within ten (10) days of your receipt of this notice to begin the mediation process.

You may reach the Alternative Dispute Resolution (ADR) department directly at (205) 212-2146

EEOC FORM 131 (5/01)

U. S. Equal Employment Opportunity Commission

Ms Kim Fehl
City Attorney
CITY OF MONTGOMERY
P.O. Box 1111
Montgomery, AL 36101

RECEIVED JUL 21 2006 CITY ATTORNEY'S OFFICE

PERSON FILING CHARGE

Candida Stokes

THIS PERSON *(check one or both)*

☐ Claims To Be Aggrieved

☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

420-2006-03813

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

☐ Title VII of the Civil Rights Act ☒ The Americans with Disabilities Act

☐ The Age Discrimination in Employment Act ☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☐ No action is required by you at this time.
2. ☒ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☒ Please provide by **21-AUG-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by ______ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☒ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **02-AUG-06** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**
   If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Murry A. Gosa,
Intake Supervisor

EEOC Representative

Telephone: **(205) 212-2119**

Birmingham District Office - 420
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ AGE ☒ DISABILITY ☐ RETALIATION ☐ OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
July 19, 2006	Bernice Williams-Kimbrough, District Director	Bernice Williams-Kimbrough

CONSENT TO MEDIATION

The employer is in receipt of Charge No. 420-2006-03813 filed by Candida Stokes ____________ against City of Montgomery. The employer is interested in resolving this charge through Equal Employment Opportunity Commission's (EEOC) Alternate Dispute Resolution (mediation) process.

We understand that if the charge is selected for mediation, the charge will be mediated by the EEOC ADR Administrator who is a certified mediator or another neutral mediator who is not employed by the Commission.

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We understand that the mediation process is confidential. The employer will not disclose any information discussed within the mediation process or the outcome of the mediation process. The employer does authorize the mediator to disclose to the EEOC's Birmingham District Office the final results of the mediation process and any benefits received by the complainant. This information is reported for ADR program evaluation purposes only.

If the charge is selected for mediation, the employer agrees to cooperate with the EEOC and the mediator toward resolving the charge.

[signature]

Signature for the Respondent

Date 25 July 06

INFORMATION ON CHARGES OF DISCRIMINATION

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Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

EXHIBIT 2
NOTICE OF RIGHT TO SUE

EEOC Form 161-B (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: Candida Stokes
2215 Taylor Mill
Elba, Alabama 36323

From: Equal Employment Opportunity Commission
Ridge Park Place
1130 South 22nd Street South, Suite 2000
Birmingham, Alabama 35205

RECEIVED MAY 2007 CITY ATTORNEY'S OFFICE

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
420 2006 03813	Rita W. Sterling, Investigator	(205) 212-2060

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

[X] More than 180 days have passed since the filing of this charge.

[ ] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.

[X] The EEOC is terminating its processing of this charge.

[ ] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

[ ] The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.

[ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Delner Franklin-Thomas (signature) 4/29/07

Enclosure(s)

Delner Franklin-Thomas, District Director *(Date Mailed)*

cc: Audrey R. Channell
WIGGINS, CHILDS, QUINN
Attorney For CP
The Kress Building,
301 19th Street, North
Birmingham, Alabama 35203

Walter Byars
City of Montgomery
P.O. Box 1111
Montgomery, Alabama 36101

EXHIBIT 3
FITNESS FOR DUTY EVALUATION

#4

Park Place Psychiatry, LLC
Park Place Center
7051 Fain Park Drive, Suite 117
Montgomery, AL 36117
Ofc: (334) 215-7308 Fax: (334) 215-4427

David D. Schaffer, D.O., Ph.D. *Judy Heinzman, R.N., C., L.P.C.*

January 20, 2006

John Carnell
Risk Management
City of Montgomery

RE: Fitness for Duty Evaluation of Candida Stokes

Dear Mr. Carnell:

On December 19, 2005, Candida Stokes (DOB 01/03/72; SS# 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) attempted suicide. John Carnell of Risk Management for the City of Montgomery requested that I perform a fitness-for-duty evaluation on Ms. Stokes.

Ms. Stokes arrived on time for her evaluation. She was well groomed, appropriately dressed, and appeared to be in good health. She was cooperative with the evaluation and forthright in her reporting of her suicide attempt. She maintained good eye contact. Her speech was of regular rate, rhythm, volume, and inflection. She was understandably worried about the fate of her job but remained calm and collected. She admitted being anxious about keeping her job but otherwise reported that her mood was stable and she was not feeling depressed. The affect I observed in her was congruent with her reported mood. It was of normal breadth and was appropriate. She was alert and fully oriented. Her thought process was logical and goal directed. She denied having thoughts of harming herself or others. I felt her judgement and insight were good.

She told me that she took 150 tablets of Tylenol-PM. As a police officer she was well aware that this was a lethal dose of Tylenol if not treated. Her attempt failed because a friend went to her house and found her in time to get her the emergency medical treatment she needed. She was taken to Baptist Hospital's emergency room and then admitted to it's intensive care unit where she spent five days. She was transferred from the intensive care unit to the inpatient unit of Baptist Hospital's Meadhaven Psychiatric facility where she spent an additional two days under the care of Dr. Harwood. He discharged her from Meadhaven's inpatient unit and admitted her to Meadhaven's Partial Hospital Program. Dr. Harwood discharged her from the partial hospital program after she had attended for ten days. Since then she has been seeing Linda Holmberg for counseling.

Based on my fitness for duty evaluation of Ms. Stokes and my prior knowledge of her as a patient, it is my professional opinion that she is fit to return to duty. I based my opinion on a review of the stresses she was under at the time of her suicide attempt and her ability to cope since then.

At the time of her suicide attempt Ms. Stokes was under extreme stress. She went through the stress of a divorce a couple of years ago. A little over six month before her overdose, on May 29, 2005, her mother passed away. Her mother's death coupled with the responsibilities of being a single mother put her under a great deal of stress. She lacks any family members to provide her with support. The only close relative she has is a sister who is not of any help. She has a thirteen year old daughter that she is raising by herself. Tremendous demands were made on her as she strove to holding down a full-time job and raising a daughter without any help.

A very important consideration at the time of her overdose was the chronic sleep deprivation she was experiencing. She reported that she had gone from third shift to first shift, then second shift, and finally back to third shift. Third shift starts at 10:00 PM and lasts until 7:00 AM. She would get off her shift and return home just in time to take her daughter to school. She would return home and attempt to get some sleep before it was time to pick her daughter up from school. She would then attempt to get some additional sleep. In general, she had a short period of time in which to get her sleep and even that time was sporadic. She spent the last part of the day before returning to work cooking dinner and caring for her daughter. At the time of her suicide attempt she was chronically sleep deprived, exhausted, and overwhelmed.

When I evaluated Ms. Stokes she had over two months to consider the factors and stressors that lead up to her overdose. I asked her why she felt she was not at risk of making another suicide attempt. She indicated that during tis period of time she gained a better understanding of herself and her problems. She firmly believes she learned valuable coping skills from the therapy she received during this period. She learned through therapy ways to better manage her time. She has had time to consider the impact that her suicide would have had on her daughter. Ms. Stokes currently remains in therapy. In spite of the seriousness of her overdose, I feel she is mentally and emotionally fit to return to her duties as a police officer. I strongly believe that chronic sleep deprivation and both mental and physical exhaustion were major factors leading to her attempted suicide.

Once again, it is my professional opinion that she is fit to all duties as a police officer. Please call me if you have any further questions. We do not discuss patients without prior authorization; therefore, please be sure to identify yourself and indicate you wish to speak to me regarding Ms. Stokes.

Sincerely,

David D. Schaffer, D.O., Ph.D.

David D. Schaffer, D.O., Ph.D.
Psychiatrist and Medical Director

EXHIBIT 4
EXCERPT FROM BOBBY BRIGHT'S DEPOSITION

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also tells me that -- it tracks what has taken place up to that point. And then I make a determination. If I have further questions to ask, I make a determination -- I ask those questions. And if I get good answers or get the answers to those questions, then I sign off on the final recommendation. If I don't get good answers, then I send it back or I reverse it or I throw it out or I change it or I do whatever I think is appropriate.
And that's what happened here is that it comes up to me with a final recommendation of a different hearing agent -- boards, and then I either sign off on it, or I reverse it or do whatever I need to do to correct what I think has been done.
Q. Okay. But my question to you is on this particular case --
A. Sure.
Q. -- what were the reasons, all of the reasons, for Deputy Stokes' termination?

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A. I really don't know all the reasons, to be honest with you. I don't even know the facts, as we sit here.
Q. Do you know any of the reasons?
A. I know, I think, based on what I was -- I don't know if I need to talk about attorney-client. But based on my meeting with my attorney, and I recall the major fact is that -- is it Deputy Stokes?
Q. Yes.
A. She's a deputy?
Q. Yes.
A. She committed suicide -- or attempted to commit suicide.
Q. Okay.
A. That to me, in and of itself, is justifiable grounds not to be a police officer.
Q. Tell me why.
A. Ooh, man. I've been trained in police work, and you just don't want someone with that instability carrying a

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lethal weapon and representing our police department out on the streets of Montgomery. It's a tough enough job for a completely okay person.
Q. What do you mean a completely okay person?
A. A person that doesn't have the depression and the mentality to commit suicide.
Q. Okay. So you were concerned that she was -- that Deputy Stokes was mentally unstable it sounds like?
A. I don't know if that's -- That sounds so cold. I just don't know if she had the capability to be the type of police officer that she needed to be to be on our force with that -- I mean, you know, it's one thing to be depressed; it's another to actually act out that depression to the point of self-destruction. And can you imagine if -- what could happen to her out there on the streets if some of these thugs that are out there, that she has to deal

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with found that out and started -- and started using that against her in some form or fashion? That could create tremendous liability for her, but also for the City of Montgomery.
Q. Okay. You said you don't know if she could be the type of police officer that would be -- and I'm recharacterizing you but I don't mean to, so correct me if I'm wrong.
A. Okay.
Q. You didn't know if she could be the type of police officer that would be appropriate for the Montgomery Police; is that essentially what you're saying?
MR. BOYLE: Object to the form.
A. Not with the fact that she acted out her depression. That's the bottom line here, I think, more than anything. I think bottom line is, had she not taken that, I think, the extreme step, the ultimate step of self-destruction, we would

FREEDOM COURT REPORTING

have, and I think we did -- would have worked with her to try to correct or improve or help the depressed stage.

But when you take the final act of -- It's kind of like a criminal, you do everything you possibly can -- I'm not saying she's a criminal.

Q. I understand.

A. I'm saying in fighting crime, you do everything you can to keep them from committing the crime, and you can really do a lot of things to help that. But once they commit the crime, it's kind of taking it out of your hands. You then have to prosecute them, and they have to serve time, things like that.

In her case, up to the point of committing the act, we would do everything we possibly can to help make her a better and more stable police officer. But once the act was committed, our hands, I think, are tied. We can't do anything else. And you're -- You, at that point in time,

become an unfit police officer -- person to become a police officer on the Montgomery Police Department. I'm not saying, you know, another county or another department, what they -- what their criteria and what their qualifications would be, but ours is pretty rigid, to be honest with you. Pretty straight and narrow.

Q. Well, is it your testimony then that had she just had depression and not attempted suicide, that -- what would the department have done with her?

A. I think they were already doing things with her. Wasn't she already participating in the drug assistance program -- employee assistance program, not drug assistance, employee assistance program?

Q. Do you know whether she was?

A. I was told she was and I assume she was.

Q. Okay. So what exactly were they doing with her?

A. I have no idea.

Q. Okay.

A. That's not my business.

Q. So is it -- Is it your -- So, does the department screen or take any steps to find out who in the -- who in the -- Strike that.

Does the City take any steps to ascertain which of its police officers have depression, or any sort of mental illness?

A. You know, you're asking me --

Q. I'm asking you.

A. There may be, but I don't know. I don't know if there are any procedures or any tests. You know, we hire -- we hire personnel, and we send them through a pretty rigid list of qualifiers, and one of them is a mental evaluation. And if they pass that, then they come in, and we put them in the academy, and then we train them.

Q. Is it your testimony that the department conducts mental investigations of

its police officers prior to their hire?

A. Uh-huh. That is my testimony. Psychological. I don't know if they call it mental, a psychological evaluation.

Q. Okay. So this is during the application process?

A. Sure.

Q. Do you know that's a per se violation of the ADA in section 504?

A. I don't know anything. I don't know the law on that. If it is, you need to let us know so our lawyers will stop it if it is against the law.

Q. Do you care whether it's against the law?

A. If it's against the law, I definitely care.

Q. If it would be illegal to screen somebody for mental health --

A. Is it mental health or psychological?

Q. Same thing.

A. Psychological evaluation? I

FREEDOM COURT REPORTING

don't know.
Q. If it was illegal to conduct any sort of psychological/mental health evaluation during the application stage -- Let me ask you this: Do you know for sure that the police department actually conducts mental health/psychological evaluations during the application phase?
A. I know we do. That's one of our disqualifiers.
Q. Okay.
MS. MATTISON: Let me make a bumble bee in the Record and just note that we haven't seen any mental health evaluations of anybody. So if there are, we can talk about this later.
A. If there's not, I apologize. That's one of our disqualifiers that I'm aware of.
MR. BOYLE: Off the Record.
(Off-the-Record discussion was held.)
Q. Okay. Now, so the City then

relies on persons to state whether they have a mental health issue; is that right?
A. I really don't know. You're asking me details I don't know. I mean, I'm just the administrator.
Q. Well, you're the final say for the City, are you not?
A. I know that, but --
Q. Am I correct?
A. You're right, I am.
Q. Okay.
A. You're right, I am. But that doesn't mean that I have all the information and all the knowledge.
Q. Okay. Would it be in your opinion -- Now, I'm a little unclear about the thugs finding out about the suicide. Explain that to me, what's the risk there?
A. If they knew that she had attempted something like this drastic to harm herself, they would possibly antagonize her to try to do more. Or they would use it against -- If she was to shoot one of these

guys, they would probably -- and kill them, their estate or even they would probably bring some type of lawsuit. You know how litigious we can be out there, people can be out there and accuse us that she was incompetent or incapable of making a rash decision, as to whether or not to shoot them or do something to them to stop a crime some way or another.
It's asking for -- I will tell you, it's asking for absolute complicated issues that don't need to be present when you're dealing with the public and fighting crime with the public --
Q. Okay.
A. -- even for her benefit. Even for her benefit. She doesn't need to have to be subjected to what she could possibly be subjected to if she had to use deadly force on someone.
Q. All right. Now, so it sounds to me, then, that you had some concerns about a possibility -- let me -- You don't

have any evidence that any of these things would have happened, you have concerns that there was a possibility that some -- let me just finish the question. I can see you're going to answer before I'm done.
But there was a possibility that some of these risk factors may arise; is that your concern?
MR. BOYLE: Object to the form.
A. Yeah. I guess you could say that.
Q. Okay.
A. They may arise. I can assure you, they will arise.
Q. Okay. Well, are you aware that Deputy Stokes has been employed as a police officer, essentially, since she left Montgomery and has done so without incident?
A. I am not aware of that.
Q. Okay.
A. But more power to her.
Q. Let me ask you this: Do you

have any medical evidence that supports your belief about the potential safety risk?
A. I don't have medical.
Q. Okay.
A. I mean, I don't have any myself. I'm sure you can go out there and find plenty of folks who would testify to just what I said.
Q. Well, let me ask it this way: At the time you made the decision to terminate Deputy Stokes, was the department in possession of any medical evidence that supported the department's actions?
A. Not to my knowledge. Not to my knowledge. This is based strictly on my experience and many years of experience. I've been in law enforcement and been trained also.
Q. Have you had any other police officers or worked with any other police officers that have attempted suicide?
A. Not that I know of. Not that I remember.

Q. Okay. So you don't have any actual experience with law officers that may have attempted suicide, you don't have any experience that those persons are -- actually subject the department to a risk; is that correct?
A. You know --
Q. If you'd answer my question, please, sir.
A. I don't know any police officers who have done this before, that lived to tell about it.
Q. All right.
A. I do know other police officers who have committed suicide. But she, I guess, is the only one that I know of that lived to talk about it.
Q. So you don't know, in fact, what the risk factors were. You were -- Well, you don't have any experience with what the risk factors may have been with somebody who attempted suicide, because you've never worked with any officer who has

done that; correct?
A. Wow, that was a complicated question. I'm not sure I can answer it.
MR. BOYLE: I'll object to the form.
Q. I'll ask it again.
You don't know -- Strike that.
Since you have no experience working with a police officer who has attempted to commit suicide -- let me finish please.
A. You're telling me I don't have any experience, maybe I do, and I don't know about it.
Q. Well, you've testified that you don't know of any police officer that attempted suicide that you've worked with, are we together on that?
A. That I can think of, as we sit here right now.
Q. Yeah, sure. All right.
A. But I'm sure there's people out there who have had depression that I've

worked with, possibly. But no one that I know of that actually committed the attempt or made the attempt.
Q. I understand. So since you've never worked with a police officer who has attempted suicide, you don't actually have any experience of how they might act if they were allowed to return to work, do you?
A. I mean, I guess not.
Q. Okay.
A. But I'm not sure with the question you're asking --
Q. You can't tell me of any evidence?
A. I have no specific knowledge of police officers --
Q. Now, you -- My understanding is that since you decided to terminate Deputy Stokes, you effectively were of the opinion that she could -- was not capable of performing the job duties that were contained in her job description; is that correct?

EXHIBIT 5
EXCERPT FROM CHIEF ARTHUR BAYLOR DEPOSITION

EXCERPT FROM CHIEF ARTHUR BAYLOR DEPOSITION

Pages 80 - 82

say, no, I didn't testify to that.
Q. Right.
A. What I was looking at the public safety.
Q. Right. Public safety whether she was potential risk -- whether she was potentially dangerous; right?
A. Public safety concerns of -- for the citizens, for the officers, and then for the officer herself.
Q. So again, as I looked at the paperwork, and I understand you didn't testify, but you had some concerns that there might be a risk of injury or safety to the citizens or the other police officers if she came back after she attempted to commit suicide?
A. Yes.
Q. Kind of a nutshell; right?
A. Yes, ma'am.
Q. And ultimately as I read the paper, it was determined that since the

city couldn't rule out a potential risk that she might be a safety risk or injure citizens or other police officers, the decision was made not to bring her back?

A. Not -- I think she was there. She was dismissed.

Q. Right. She was not allowed to come back as a patrol officer. The decision was made that she should be dismissed because the city felt that it couldn't rule out the possibility of a risk that she might either injure citizens or injure other police officers?

A. I think what we dismissed her on was the two charges that were brought against her due to remain fit, rules and regulations of policies and procedures and duties of responsible employment, that's why she was terminated.

Q. I understand that. But in

looking at the testimony and especially Mr. Carnell's testimony, what -- what it looks like is that the reason that she -- ultimately the reason she was found -- I mean, kind of bottom line the rule, the reason that she was terminated was because there was -- there continued to be that safety risk or harm?

MR. BOYLE: Object to the form.

A. Again, I can answer it the best way I know how to. Due to the public safety concern for the citizens, for the officers, for fellow officers and then for the officer herself. And she was charged with under the rules and regulations that we all supposedly follow or have to follow and she violated that.

Q. Did the city have any evidence that she was not capable of returning to her job, that she actually, in fact, wasn't capable of returning to

EXCERPT FROM CHIEF ARTHUR BAYLOR DEPOSITION
Pages 199 - 202

A. Where are you? I'm not sure.
Q. I'm sorry. Page 10.
A. Where?
Q. About -- almost half of the way down. Right here (indicated).
A. This one?
Q. No. Right there (indicated).
A. Okay. What about it?
Q. Well, I'm asking -- you've read that; correct?
A. Yes, ma'am, just read it.
Q. And my understanding is you two had such -- had a similar concern; is that right?
A. About the public safety, yes.
Q. What did you think she might do?
MR. BOYLE: Object to the form.
A. What?

Q. What did you think she might do that --

A. She already tried to kill herself. And if she tried that again and she had a partner or a citizen out there and didn't respond, that would be a problem, a public safety issue.

Q. So you're saying that if she killed herself while on duty, then she couldn't respond?

A. Right. And leaves her partner also or her back-up or if she was a back-up, it creates a public service -- a public safety concern.

Q. What were some other -- what were some other safety concerns?

A. Like I said earlier, for the -- other citizens, other officers, and for herself also.

Q. Right. I'm just trying to figure out what -- other than attempting to kill herself while on duty, any other concerns that you thought?

A. Just what I just said, that she wouldn't -- if she didn't do her job, like she tried to kill herself, that would put other people in harm's way.

Q. Now, Mr. Carnell essentially testifies that he didn't think that Ms. or that Deputy Stokes was really capable of coming back and performing her job duties and sounds like you essentially don't disagree with that, am I right?

A. As far as I'm concerned?

Q. Yes.

A. I don't know what John Carnell thinks, but what I think is no. From the act that she committed, there is a problem with that act, yes, ma'am.

Q. And that would interfere -- that would really mean she couldn't satisfactorily perform her job duties?

A. I see a problem with the act that she committed, yes, ma'am.

Q. Right. But the act she committed and the safety concerns associated with it, meant that you basically thought there was enough of a concern that she couldn't perform her job duties?

A. She committed an act that in my opinion created a public safety concern and so that's why I recommended dismissal.

Q. And her -- but I'm assuming if you thought that she could successfully complete her job duties, you wouldn't have recommended dismissal? If you thought she could have come back and safely performed her job duties, you wouldn't have recommended that she be dismissed, I'm assuming?

MR. BOYLE: Object to the form.

Q. Am I right?

A. We go by the rules and regulations of the police department and that's what I follow are the rules and regulations of the police department. And very simply is -- just as you gave earlier when we started, let me give you one way out there. An officer goes out and kills someone, but I'm not going to let him stay an officer, okay. And the same thing goes for this. If a person commits that act, I'm going to recommend they be dismissed and that's what I did.

Q. But the point I'm making and maybe it's just such a simple point that it doesn't -- I'm having a hard time communicating it, but essentially because of what she did you deemed that she wasn't capable -- she was no longer capable of safely performing the duties of her job?

A. It's just what I said. I said it three times now. That's my answer. Is the act that she committed put her in violation of the Montgomery

EXHIBIT 6
EXCERPT FROM LT. COL. K.J. MURPHY DEPOSITION

FREEDOM COURT REPORTING

on that?
A. I mean fundamentals like employees are given twelve weeks of leave. We -- I mean, people call in sick and they're out three days. We've got to do FMLA, and we do a lot of them. I mean the paperwork is pretty high as far as that goes.
Q. Okay. Do you know -- What's your understanding of what entitles someone to be on Family Medical Leave? Is it that they're out three days?
A. That they're --
Q. Or having a child or --
A. Right. That they have so many weeks to be away from the job and that their job is secure; that they can have their job back when they come back.
Q. Okay. Do you understand -- So you understand that when employees come off of Family Medical Leave, that they're entitled to have their jobs back?
A. Yes, ma'am. But, again, I'm

not an expert in ADA or Family Medical Leave.
Q. Okay. Do you understand that they're -- I mean, do you have an understanding of any reason why an employee could not have their job back when they're off of Family Medical Leave, when they come off of Family Medical Leave?
A. I don't know. We rely on Ms. Montoya over personnel and John Carnell, safety director, and the attorneys to assist us in those type decisions and situations.
Q. Now, with regard to Ms. Stokes, did you talk to John Carnell at all about her continued employment with the city or talk with her at all?
A. Talk with him?
Q. Yes, I'm sorry. Thank you.
A. Yes, I did.
Q. Tell me the gist of your conversations with Mr. Cornell. Is he your only risk management person?
A. That I'm aware of, yes, ma'am.

Q. Okay.
A. He, obviously being the city risk manager, handled the aspect, I guess, of Deputy Stokes' FMLA or ADA, whatever the case may be. Mr. Carnell told me on the phone, and I asked him also to appear at her trial board. Mr. Carnell conveyed to me that he felt keeping her as a police officer was a liability and a risk.
Q. Okay. It sounds like you agreed with him?
A. Yes, ma'am.
Q. And is that basically what -- is that -- in reliance on Mr. Carnell -- am I pronouncing right?
A. Yes, ma'am.
Q. -- is that what led you to recommend Ms. Stokes' dismissal?
A. No, ma'am.
Q. What did he tell you was a liability or concern about keeping Ms. Stokes? What was the concern?
A. Because she had attempted to

take her own life, she posed a risk to the safety of the officers and the public.
Q. Okay. Was there a concern that she might try it again?
A. Yes, ma'am.
Q. A concern maybe that she wasn't stable enough to do her job?
A. Yes, ma'am.
Q. Were you concerned or was he concerned or did he convey that he was concerned that her depression really might interfere with her ability to use good judgment or her -- I guess mental status might interfere with her ability to use good judgment?
A. No, ma'am. He never said that.
Q. Okay. What did he say?
A. What I previously stated, that because she attempted to take her own life, she posed the risk and a liability to the city and to the officers and to the public.
Q. Okay. And my understanding is

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your thought -- or his thought was that even a slight risk would be too much of a risk?
A. Mr. Carnell never used that word, slight. He just said risk.
Q. Some risk. Because there was no way to know that she might try it again, just that there was a possibility she might try to commit suicide again?
A. I'm sorry. I don't understand your question.
Q. My understanding is that Mr. Carnell indicated that -- Of course, nobody knows whether Ms. Stokes would try to commit suicide, but there was the fear that she might try to commit suicide again, and that that made her the risk and liability?
A. You will have to ask Mr. Carnell that question. I don't know how he would answer that.
Q. What was your concern?
A. In as much as what? My concern of what?
Q. About Ms. Stokes being a

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liability or risk. You said you also had the concern, what was your concern?
A. I felt that she posed a risk to her fellow officers and to the public because she had tried to take her own life.
Q. And what was the risk? I guess that's what I'm trying to get at, what was the risk?
MR. BOYLE: Object to the form. Go ahead.
A. If she were to find herself in a dangerous situation, or a life-or-death encounter, that she might not act appropriately.
Q. Like give me an example.
A. Faced with a deadly force encounter, and she wanted to end her life, she would allow herself to get shot and killed.
Q. I see.
A. And if she had a partner, an officer with her, they haven't made that choice, and they very well may get killed

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too.
Q. Now, is this something that you thought or did Mr. Carnell also indicate that he thought that also?
A. We had a conversation, and he agreed with what I just said.
Q. Okay. Did you consider any other potential risks that she might have other than if she were to find herself in a life-or-death situation that she might not act appropriately?
A. That's a broad question. I'm not sure exactly what you're asking.
Q. Did you consider any other potential risks or liability other than that she might be in a situation like you just described?
A. Well, I mean, I guess if you wanted to end your life, the possibilities are numerous. But I can't say that I really thought of how someone in that state of mind would try to kill themselves.
Q. Okay. Did you talk with any

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of her doctors or do you know whether anybody talked with any of her doctors about the potential risk or potential liability?
A. I did not.
Q. Do you know whether anyone else did?
A. I don't. I left that to Mr. Carnell.
Q. What, if anything, could Ms. Stokes have done to put you at ease that she wasn't going to be a risk or a liability? It sounds like probably nothing.
MR. BOYLE: Object to the form.
A. I can't think of anything.
Q. Okay. Do you know if she's working now as a police officer?
A. Yes, ma'am. I was told.
Q. Okay. How do you feel about that?
A. I'm happy for her. But, I mean, I like Deputy Stokes, and she's a good officer, and it was a very tough decision to

A. I'm not on here.
Q. Do you know who made the decision to place, and this is January 26th, 27th, to place Deputy Stokes on administrative leave?
A. No, ma'am, I don't.
Q. You didn't make the decision to put her on administrative leave?
A. No, ma'am.
Q. When did you make the decision to recommend termination? Was it right after she attempted suicide?
A. Oh, no. When I read the investigative file and drew up the papers for charges and specifications, that's when I made my determination.
Q. Okay. All right. And I'm assuming that it was based on the liability issues that factored into it?
A. The facts and evidence in the file.
Q. Okay.
A. Not just the liability, but

the act, itself, the conduct was also a factor.
Q. Right. But the act, itself -- I mean, what I'm hearing about the act itself, is the act itself really raises the issue of the risk and the potential liability meaning she couldn't perform her job?
A. It is a consequence of the act.
Q. Okay. Do you remember when Deputy Stokes returned to work?
A. Not exactly, no, ma'am. When you say returned to work --
Q. Returned to employment of some sort with the city.
A. I don't specifically.
Q. Who made the decision to put her on the back desk?
A. I spoke to the chief about it, and we decided that she should be on administrative duties until further notice.

Q. Okay. So it sounds like you did make the decision to put her on administrative leave?
A. No, ma'am. Administrative leave with pay is when you go home.
Q. Okay.
A. That's leave. But administrative duties is when you're actually working; you're in the building, but you're not actually out on the street.
Q. Okay. So you did not make the decision to put her on administrative leave with pay, but you did make the decision to put her on administrative duty?
A. Yes, ma'am.
Q. And on what basis did you make the decision to place her on administrative duty?
A. Because she had attempted suicide and I felt that she was not stable enough to be on the streets.
(Whereupon, Plaintiff's Exhibit No. 7 was marked

for identification.)
Q. I'll show you Plaintiff's Exhibit 7.
MS. MATTISON: Do you want a copy of this?
MR. BOYLE: I have it. Thank you.
Q. All right, now, do you recognize this?
A. I do.
Q. And on the 24th, you're recommending that she be placed on administrative leave with pay until January 24th. That's what the memo says; right?
A. Yes, ma'am.
Q. And that beginning on January 25th, she be placed on administrative duties?
A. Yes, ma'am.
Q. All right.
A. The operant word was respectfully request. I didn't actually approve it.

EXHIBIT 7
EXCERPT FROM JOHN CARNELL DEPOSITION

FREEDOM COURT REPORTING

Murphy called you, Deputy Stokes was being checked into the emergency room, essentially?
A. That's what I was notified of, yeah.
Q. Who decided to get a fitness-for-duty evaluation for Ms. Stokes?
A. Now, I think that was my decision.
Q. Okay.
A. If I remember right, I notified Colonel Murphy that we should do a fitness-for-duty evaluation before she comes back to work.
Q. And why?
A. To determine if she was fit for duty.
Q. Okay. So -- And did you get the results of that evaluation?
A. I received I believe -- I can't remember if it was a letter -- Yeah, I think I received a letter from the American Behavioral people, Sharon Bell I think was

the lady that notified me.
Q. And so you understood from receiving that letter that Deputy Stokes was fit to return to work?
A. According to them, yeah, she was fit for duty.
Q. Do you have a medical background?
A. No.
Q. Did you have any evidence that she was not fit for duty?
A. At that time, no. I have to go basically on what they tell me.
Q. At any point, have you had any evidence that Deputy Stokes was not fit to return to her job?
A. No.
Q. Okay. Then why didn't she return to her job?
A. I can't tell you that. I turned the notification over to the chief of police and the decision is made above my pay grade.

Q. I've reviewed notes from Deputy Stokes' counselor at American Behavior, I think is what it's called. And in the beginning of February, do you remember having a conversation with one of Deputy Stokes' therapists from American Behavior?
A. No, I don't.
Q. You don't remember telling the therapist that Deputy Stokes was going to lose her job?
A. No.
Q. Okay. Is it possible you had a conversation with the therapist or somebody from American Behavior?
A. I can't remember.
Q. Okay. How did you first learn Deputy Stokes was going to lose her job? It was before she lost it, I assume.
A. I can't remember if it was from Chief Baylor or if it was through the legal office from the mayor's department or from mayor's office, I can't remember.

Q. And what did you hear?
A. I heard she was going to be terminated, dismissed.
Q. Okay. What was your understanding as to why she was terminated?
A. Because of the incident of committing suicide -- or attempting to commit suicide, excuse me.
Q. Okay. Now, you testified at the investigation involving Deputy Stokes, did you not?
A. Yeah. The trial board down there at the police department.
Q. Yeah. You testified --
A. I remember that.
Q. And do you remember testifying that you thought that Deputy Stokes was -- could possibly pose a risk?
A. I was -- I think I testified that I was concerned that she could possibly pose a risk, based on the job that she had to do out on the streets.
Q. And what would you base that

on ---+*-t did you base that on?
A. Well, the fact that she tried to commit suicide.
Q. Did you have any evidence at all that she might attempt it again?
A. No, I didn't.
Q. Well, then where -- I'm not clear how she might pose a risk, if you didn't have any evidence that --
A. Well --
Q. Hang on. Let me finish.
A. Okay. I'm sorry.
Q. That's okay.
What evidence did you have that she might pose a risk, if the doctors indicated that she was -- that she would not pose a risk and that she was free to return? What evidence did you have?
A. I guess the evidence that I was basing it on was what she did for a living and what happened. So there probably was -- There was no evidence.
Q. Did you communicate your

belief that she might pose a risk to anybody, but at the trial board?
A. No. Nobody but the trial board.
Q. Well, how -- Tell me what your memory is of learning, either from Chief Baylor or the legal department or the mayor, that Deputy Stokes may lose her job? What are you --
A. See, that's what I'm not clear on. I can't remember how I was told that she might lose her job, whether it was from the mayor, whether it was from Chief Baylor, or whether it was from the legal office.
Q. You were told, as I understand it, that she would lose her job?
A. That she was up for dismissal.
Q. Right. And that she would be dismissed; is that your understanding?
MR. BOYLE: Object to the form.
A. I believe that was my understanding, yes.

Q. She was going to be dismissed because she had attempted suicide?
A. Uh-huh.
Q. I'm sorry, you have to say yes or no.
A. Yes. Yes.
Q. And do you know what the rationale was, what the fact that she had attempted suicide, why would that cause her termination? What was your understanding?
A. It was my understanding that according to what I was told, and I can't remember where it come from, that she was being terminated due to the fact that attempting suicide or committing suicide was against the law, something of that nature.
Q. Okay. Do you know if attempting suicide is against the law?
A. From what I've understood since then, is that it -- If you're successful, you're okay, it is against law; but if you don't, it's not against the law. If you're not successful, something like

that. It's really strange.
Q. How did you come to -- How did you hear that?
A. I'm trying to remember. I think it came from -- through conversations with the legal department about whether it was -- whether you attempted or if you didn't attempt it, one was against the law and one wasn't. But that was after the fact.
Q. After she had been terminated?
A. After she had been terminated.
Q. Okay. Do you think it was fair to terminate her?
MR. BOYLE: Object to the form. You have to answer.
A. I know I have to answer. Do I think it was fair to terminate her?
Q. Yes.
A. No.
Q. Okay. Did you know that she is working for another police department?
A. I know that, yeah.

A. Uh-huh.
Q. I'm sorry, you need to say yes.
A. Yes. Yes.
Q. Now, am I understanding your testimony now that -- Well, strike that.
Do you know whether anybody else -- Well, did anybody else at -- at the City talk with you about any concerns that they may have had regarding liability?
MR. BOYLE: Object to the form.
A. Not to my knowledge.
Q. Okay. What were your concerns about liability?
A. As a risk manager, I was concerned about liability if something happened out on the streets that was involving Candida Stokes, that it would present a liability to the City because of the history she had.
Q. Okay. Why would -- Strike that.

But you didn't have any evidence that she was a risk or a liability concern?
A. No, ma'am.
Q. No medical evidence?
A. No, ma'am.
Q. Are you aware that under the federal law, decisions regarding a person's ability to work have to be made on objective medical evidence?
MR. BOYLE: Object to the form.
A. No, I'm not.
Q. Okay. And then -- Okay. You indicate down here, halfway down the page, that if you didn't have concerns about liability, you would not have forwarded her for a fitness-for-duty evaluation.
A. Uh-huh.
Q. I'm sorry?
A. Yes. Yes. I'm sorry.
Q. Again, I guess what I have to ask you, is why bother to forward her for a fitness for duty -- Well, strike that.

Does the medical information that you received alleviate your concerns about liability?
A. Yes.
Q. Okay. All right.
Now, on the top of page eleven, it looks like you advised -- maybe this is just taken out of context. See your uh-huhs, we don't know what they are.
A. Yes, ma'am.
Q. You're asked by West whether -- it says: Yes. Mr. Carnell, you referred to advising her to seek treatment, referring her to treatment, and then you say either uh-huh or huh-uh.
Did you advise Deputy Stokes to receive treatment?
A. No. I can't remember advising her to seek any treatment.
Q. All right. Halfway down page eleven, it indicates that the fitness-for-duty evaluation had been

submitted to the department. And you indicate then that you thought it was sent to the chief's office.
What do you base that on?
A. Well, I mean, I base it on I would have sent it through the chief's office. Anything I get to do with the police department would go through the chief's office.
Q. Okay. All right. Do you currently have any liability concerns regarding -- Do you currently have any evidence -- Let me ask it this way, that Deputy Stokes would have a liability if she were brought back to the department?
A. No, I don't.
MS. MATTISON: I don't think I have anything else for this witness. Thank you for coming.

EXAMINATION

BY Mr. BOYLE:
Q. Just two quick follow-ups. On fitness for duty, is that limited just to